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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-297

ROBERT E. BUTCHER and GLADYS K. BUTCHER,
Petitioners,

vs.

BURTON ABSTRACT AND TITLE COMPANY,
a Michigan corporation,
Respondent.

MEMORANDUM OPPOSING CERTIORARI

REID, GILMORE & REID
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WO. 2-8745—WO. 2-8732

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Respondent represents to the Court as follows:

1. As was disclosed in petitioners' Brief and Appendix, this case progressed through the Michigan trial court and the Michigan Court of Appeals, both denying any relief to petitioners and without any issue or even argument being raised concerning the existence of any federal question. Upon application for leave to appeal to the Michi-

gan Supreme Court, the petitioners for the first time argued that there was a federal constitutional question involved. Setting aside for the moment the validity of that argument, the denial of their application for leave to appeal (page 12a of petitioners' Appendix) shows that the denial was because the appellants "have failed to persuade the Court that the questions presented should be reviewed by this Court." It seems apparent that the "questions presented" to be "reviewed" could not have included any federal question, since no federal question or issue had been raised in the lower courts, and no decision on that point was necessary. The best evidence of that statement is that no certificate of the Michigan Supreme Court as to the inclusion in its decision of a ruling on any federal question has been forwarded to this Court, or even requested. Nor, it is submitted, would there be any basis for a finding of that sort. The record itself shows that the issues decided under state law were on an adequate and non-federal ground, effectively preventing any state court decision to the contrary or a favorable consideration of the petition here presented (*Herb v. Pitcairn*, 324 U.S. 117).

2. It is undisputed that the action here is based upon a written contract, a title insurance policy, and on nothing else. The only issue considered by the state courts was the meaning of the clause in that insurance contract set forth in the quotation from the policy on page 13a of petitioners' Appendix, and specifically the definition of the word "encumbrance" as used there, and its applicability to petitioners' property at the time of issuance of the policy. The consideration of that issue by both Wayne County Circuit Court and the Michigan Court of Appeals is displayed at length in petitioners' Appendix. Both the original judgment and its affirmance were based solely on the meaning of those contractual provisions.

Essentially, the issue decided is expressed very well in the quotations from *Mayer v. Van Schaick*, 268 NY 320; 197 NE 296 (1935), on page 16a of petitioners' Appendix. The instant case did not turn on a question of whether the Michigan statutes provided for lawful encumbrances or liens on petitioners' property (that was decided in the previous *Butcher* litigation, cited in their brief) but whether any such encumbrances or liens existed at the time of issuance of the title policy. The Michigan courts in deciding that item uniformly held that they did not, and therefore were not covered by the terms of the policy. This case, to repeat, is strictly and completely an interpretation of a contract, and nothing more.

Petitioners' frivolous and illogical attempt to introduce into this litigation a federal question which does not and could not exist under 28 U.S.C., Section 1257, cannot confer jurisdiction upon this Court where there is none.

Therefore, the petition for certiorari should be denied, with costs awarded to this respondent.

Respectfully submitted,

REID, GILMORE & REID
By: George H. Cholack
Counsel for Respondent
714 Ford Building
Detroit, Michigan 48226

Dated: September 27, 1974.

CERTIORARI DENIED